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# AMERICAN POLICY TOWARD THE SINO-JAPANESE DISPUTE

*by*

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*with the aid of the Research Staff of the Foreign Policy Association*

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## INTRODUCTION

FOLLOWING Japan's invasion of Jehol province in January 1933, it was informally announced in Washington that the United States had recently informed other powers that it still adhered to the non-recognition doctrine laid down in its note of January 7, 1932. That this would also be the attitude of the next administration was indicated by a statement issued on January 17, 1933 by President-elect Roosevelt in which he declared that "American foreign policy must uphold the sanctity of international treaties. This is a cornerstone on which all relations between nations must depend."

The Japanese invasion of Jehol has once more demonstrated that the combined efforts of the League of Nations and the United States have been ineffective in maintaining peace in the Orient. The reasons why the League of Nations has not been more successful in the present crisis have been discussed in a previous report.[1] The nature and results of American policy will be analyzed in the following pages.

The Japanese offensive in China, which broke out in September 1931, constituted a challenge not only to the Anti-War Pact, of which the United States was co-author, but to the traditional policy of the United States in the Orient. It may be doubted whether the Hoover-Stimson administration would have taken the initiative in support of the Anti-War Pact had a serious controversy broken out in Europe. The United States, however, did not believe that it could ignore the Sino-Japanese dispute, because Japan had defied the principles of the Open Door and the territorial integrity of China, formally embodied in the Nine-Power Treaty concluded at the Washington Conference of 1922, as well as the balance of power in the Pacific established at that conference.

When the Sino-Japanese dispute broke out, the United States could have adopted either an "independent" or a "cooperative" policy for the maintenance of peace: it could have made unilateral protests to Japan, without reference to the views or action of other powers; or it could have joined other states in establishing a common front on behalf of peace. In practice American policy—necessarily the fruit of improvisation, having been accentuated by the fact that the United States did not belong to the League—was a combination of both the "independent" and the "cooperative" policies.[2]

Between September 22, 1931 and January 7, 1932, the State Department issued nine communications urging the parties not to violate their obligations under the Anti-

1. Raymond L. Buell, "The Weakness of Peace Machinery," *Foreign Policy Reports*, Vol. VIII, No. 14, September 14. 1932.

2. For a historical account, cf. John deWilde, "The League and the Sino-Japanese dispute," *Foreign Policy Reports*, Vol. VIII, No. 10, July 20, 1932. Cf. also Clarence G. Berdahl, "Relations of the United States and the Council of the League of Nations," *American Political Science Review*, June 1932.

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War Pact and the Nine-Power Treaty, five of which were addressed to the Japanese government alone.[3] The State Department, however, early expressed a desire to cooperate with the Council of the League of Nations. Thus, on October 5, it communicated to the Council a memorandum stating that the "American Government acting independently through its diplomatic representatives will endeavor to reinforce what the League does . . ." On November 7 the announcement was made that it was the policy of the United States, "by acting independently through diplomatic channels and by reserving complete independence of judgment as to each step, to cooperate with and support other nations of the world in their objective of peace in Manchuria."[4] Commenting on December 10 on the resolution establishing the Lytton commission, Secretary Stimson declared that from the beginning the United States had "endeavored to cooperate with and support the efforts of the Council by representations through diplomatic channels to both Japan and China."

**The United States and the League**

During this period, however, the cooperation of the United States with the League was not complete. On the outbreak of the Sino-Japanese conflict, members of the League Council wished to establish a commission of inquiry, in accordance with the procedure applied by the League in previous disputes. Had this commission been established, peace might have been soon restored. On September 23, however, the Japanese representatives suddenly stiffened their opposition to the proposed commission, explaining "that they had received word from their Washington embassy that Mr. Stimson, in orally urging peace on their Ambassador that morning, had opposed the commission and criticized the Council tactics." The American observer at Geneva later confirmed this report. The proposal for a commission consequently was dropped.[5]

During the September meeting of the Council, personal contact between the United States and the League of Nations was maintained unofficially through the American consul at Geneva, Mr. Prentiss Gilbert, and the American minister at Berne, Mr. Hugh Wilson. At the October meeting, the United States established an official basis of cooperation by accepting an invitation from the Council members, with the exception of Japan, to have Mr. Gilbert sit at the Council table. The American representative participated in four meetings of the Council beginning October 16, but made no statement even concerning the application of the Anti-War Pact except when responding to the greetings of his colleagues. At the November meeting of the Council, held in Paris, the United States abandoned the precedent of being openly represented at the Council table: Mr. Dawes, Ambassador to London, was instructed merely to be "available for conference" with the Council members. In January 1932, the United States adopted still another policy of keeping in touch with the League. On two occasions at least the State Department allowed the British representatives to speak for the United States at the Council, although American officials were at the time present in Geneva.[6]

On the basis of Mr. Stimson's October 5 statement, declaring that the United States would endeavor "to reinforce what the League does," it was natural for the League Council to assume that the State Department would make representations to China and Japan similar to those which the Council had decided to make after consulting the United States. This policy was followed when, on September 24, the United States sent identic notes to China and Japan, corresponding to those sent to these countries by the president of the League Council on September 22. League officials expected the State Department to take similar action concerning the draft resolution of October 24, calling on Japan to withdraw its troops to the Manchuria railway zone by November 16—a resolution adopted by the Council members, Japan excepted, in the presence of the American representative, Mr. Gilbert, who offered no objection. The State Department, however, remained silent until November 5, when it sent a private memorandum to Japan which failed to mention any evacuation date, but declared that Japan had "temporarily, at least, destroyed the administrative integrity of China . . ." On December 10 Secretary Stimson publicly endorsed the resolution adopted that day by the Council establishing the Lytton commission.

**The United States Follows An Independent Policy**

Although the United States thus supported some of the Council resolutions, it did not hesitate to take the initiative, especially after the adjournment of the December meeting of the Council. Thus on January 7, 1932 the State Department, without first securing the support of any other power, dis-

3. "Conditions in Manchuria," *Senate Document, No. 55,* 72nd Congress, 1st Session.

4. *The United States Daily,* November 7, 1931.

5. Clarence Streit, *New York Times,* September 17, 1932; Berdahl, "Relations of the United States and the Council of the League of Nations," and sources cited therein.

6. Cf. remarks of Mr. J. H. Thomas, February 2, League of Nations, *Official Journal,* March 1932, p. 350; and Sir John Simon, February 29, *ibid.,* p. 919. On one occasion Secretary Stimson was reported to have been highly indignant at the misrepresentation of the American position by Sir John Simon. Cf. also Berdahl, "Relations of the United States and the Council of the League of Nations," cited, p. 523; and *Manchester Guardian Weekly,* November 4, 1932.

patched its famous note to China and Japan declaring that

> "it can not admit the legality of any situation *de facto* nor does it intend to recognize any treaty or agreement . . . which may impair the treaty rights of the United States . . . and that it does not intend to recognize any situation, treaty, or agreement which may be brought about by means contrary to the covenants and obligations of the pact of Paris."

Secondly the United States, alone of the great powers, concentrated its entire fleet in the Pacific. In January 1932 the scouting fleet, ordinarily stationed in the Atlantic, joined the battlefleet at Hawaii for manoeuvres. Although these manoeuvres were soon completed, the Navy Department announced in May that the scouting fleet would remain in the Pacific until October 1, a date which subsequently was postponed until after the fleet concentration in the winter of 1932-1933.[7]

In the third place, the State Department on January 26, 1932 published the entire text of its correspondence with Japan,[8] which hitherto had been kept secret, but which now revealed that the United States had taken a stronger stand against Japan than the League of Nations. The publication of these protests in a single document, at a time when the League seemed to be weakening, further aroused the Japanese against the United States.

Fourthly, on February 23, 1932, Secretary Stimson sent a letter[9] to Senator Borah, declaring that the Nine-Power Treaty

> ". . . was one of several treaties and agreements entered into at the Washington Conference by the various powers concerned, all of which were interrelated and interdependent.[10] No one of these treaties can be disregarded without disturbing the general understanding and equilibrium which were intended to be accomplished and effected by the group of agreements arrived at in their entirety . . . The willingness of the American government to surrender its then commanding lead in battleship construction and to leave its positions at Guam and in the Philippines without further fortification, was predicated upon, among other things, the self-denying covenants contained in the Nine-Power Treaty . . . One can not discuss the possibility of modifying or abrogating those provisions of the Nine-Power Treaty without considering at the same time the other promises upon which they were really dependent."

Finally, on August 8, Secretary Stimson made an address before the Council on Foreign Relations of New York which constituted a vigorous defense of the Anti-War Pact, and which by implication at least held Japan guilty of having violated this pact. In the opinion of some observers this speech, which was warmly resented in Tokyo, made the recognition of Manchoukuo by Japan inevitable. The State Department, however, remained silent when such recognition was extended on September 15, and even when the Lytton Report was published on October 2.

## RESULTS OF AMERICAN POLICY

From the point of view of the development of world peace machinery, at least four constructive gains are attributed to the Hoover-Stimson policy toward the Sino-Japanese dispute: (1) the United States for the first time since the war took the "initiative" in maintaining peace in a major international controversy; (2) it advanced a new and "revolutionary" interpretation of the Anti-War Pact; (3) it cooperated with the League of Nations more closely than ever before; (4) it laid down the non-recognition doctrine, which may prove of great importance to the development of world organization. In the following pages these gains will be analyzed.

### THE UNITED STATES TAKES THE "INITIATIVE"

It is the general consensus of informed opinion that, despite many shifts of policy, the United States made a more determined effort to maintain peace in the Orient than any other great power or the League of Nations.[11] The United States was the first government to protest to Japan[12] and to enunciate the non-recognition doctrine. It was the only power to concentrate its fleet in the Pacific, and Mr. Stimson was the only foreign minister to make speeches or write letters to which Japan took strong exception.

Although many believers in world peace have hailed this development, others fear that it has aroused the resentment of the Japanese people against the United States more than against any other country. A policy of taking the "initiative" means that a state acts alone, without any assurance that its acts will be supported by other states. By taking the "initiative" in supporting a multilateral treaty such as the Anti-War Pact, a government may thus become involved in onerous responsibilities which can

7. Cf. *New York Times*, May 21, 1932; and Admiral Pratt's statement of September 30 (*New York Herald Tribune*, October 1, 1932).

8. Cf. "Conditions in Manchuria," cited.

9. U. S., State Department, *Press Releases*, February 27, 1932, No. 126, p. 201.

10. Legally there does not seem to be any more connection between the Nine-Power Treaty, which has no time limitation, and the Naval Treaty, which may be terminated in December 1936, than between the Treaty of Versailles and the unratified treaty of alliance between England, France and the United States.

11. For the political factors responsible for the lukewarm attitude of the great powers of Europe, cf. R. L. Buell, "The Weakness of Peace Machinery," *Foreign Policy Reports*, Vol. VIII, No. 14, September 14, 1932, p. 168.

12. Cf. the memorandum of September 22, and that of October 11, relative to the bombardment of Chinchow; also "Conditions in Manchuria," cited. The League Council did not protest to Japan until the memorandum of the 12 neutral members of February 16. *Official Journal*, March 1932, p. 381.

safely be assumed only by an international organization embracing every state. Would not the United States have achieved more effective results, with less danger to itself, had it exerted its efforts on behalf of peace within the framework of an international organization, rather than through what tended to be an "independent" policy?

Other critics resent the fact that the United States washed its hands of the Sino-Japanese dispute following the publication of the Lytton Report, which constituted the first proposal for a constructive settlement of the Manchuria controversy. Mr. Edwin L. James writes that the failure of the United States to support the League on publication of this report "immediately removed most of the force back of the Lytton report and automatically increased the resistance of Tokyo to its proposals."[13]

### A NEW INTERPRETATION OF THE ANTI-WAR PACT

It is contended in the second place that, as a result of its policy in the Sino-Japanese dispute, the United States has transformed the Kellogg-Briand pact into an "organized instrument for peace settlements."[14] To understand the extent to which the Anti-War Pact has been transformed by the Hoover-Stimson policy, it is necessary to refer to the original meaning attached to that instrument by the leading powers.

During the negotiation of the Anti-War Pact, the French government asked that the renunciation of war as an instrument of national policy should exclude the exercise of "legitimate self-defense."[15] Although the United States did not wish to recognize the right of self-defense in the text of the Anti-War Pact, it nevertheless declared, in a note sent to each of the 14 signatories on June 23, 1928, that there was nothing in the American proposal which "impairs in any way the right of self-defense" and that each nation "alone is competent to decide whether circumstances require recourse to war in self-defense. If it has a good case, the world will applaud and not condemn its action." Subject to this understanding, the Anti-War Pact was ratified.

In testifying before the Senate Committee on Foreign Relations, Secretary of State Kellogg declared in 1929: "I knew that this Government, at least, would never agree to submit to any tribunal the question of self-defense, and I do not think any of them would."[16] The only external restraint was the "opinion of the world"—which was apparently a "moral" rather than a "legal" force. During the Senate debate of the treaty, Senator Borah, Chairman of the Committee on Foreign Relations, stated:

> "No nation will surrender the right to determine for itself . . . what is justification for defense . . . This treaty can never go to any court . . . . The United States would have nothing to do with deciding the question of self-defense with reference to the action of any other nation unless the action of that nation were in the nature of an attack upon the United States itself . . . It will be for the government of the United States to determine upon any particular state of facts, or any set of conditions, as to what constitutes a defense of its rights."[17]

Finally, the Committee, in its report interpreting the Anti-War Pact, declared that "each nation . . . is the sole judge of what constitutes the right of self-defense and the necessity and extent of the same."[18]

Moreover, Great Britain, Japan, and the American Senate Committee on Foreign Relations all advanced wide interpretations of the right of self-defense. Thus, in its note of May 19, 1928, the British government reserved the right to protect "certain regions of the world"—the location of which was undefined—as a measure of self-defense. The Senate Committee, in its report, declared that "under the right of self-defense allowed by the treaty must necessarily be included the right to maintain the Monroe Doctrine which is part of our system of national defense." Secretary Kellogg and Senator Borah went even further and expressed the view that the Anti-War Pact would not interfere with the practice of armed intervention in any part of the world, since such intervention would be in defense of an "interest" of the United States.[19]

Although the Japanese government made no reservation concerning Manchuria at the time of signing the pact,[20] Foreign Minister

13. "The New Year Requires Revised Foreign Policy," *New York Times*, January 1, 1933.

14. President Hoover's acceptance speech of August 11, 1932.

15. Art. I, Draft Proposal of April 20, 1928. *The General Pact for the Renunciation of War* (Government Printing Office, Washington), p. 22.

16. *General Pact for the Renunciation of War*, Hearings before the Committee on Foreign Relations, 70th Congress, 2nd Session, December 1928, Part I, p. 4.

17. *Congressional Record*, Vol. 70, January 1929, p. 1063, 1066, 1069. Senator Borah declared that this was a weakness, but one which was inherent in "human nature."

18. *Senate Report No. 1*, 70th Congress, 2nd Session, January 14, 1929. This report was drawn up as a result of the Senate debate, in which many Senators declared that it was necessary to remove the popular "illusion" that the Anti-War Pact prohibited war. Cf. Senator Bingham's remarks, *Congressional Record*, January 10, 1929, p. 1479.

19. Before the Senate Committee, Mr. Kellogg declared that self-defense "covers all our possessions, all our rights; the right to take such steps as will prevent danger to the United States. I have said over and over again, that any nation has the right to defend its interests anywhere in the world." (Hearings before the Committee on Foreign Relations, cited, p. 626.) Senator Borah in the Senate debate declared: "We would have a perfect right to send an expedition anywhere, whether into Mexico or China, if it were necessary, in order to protect the lives and property of our citizens against actual threatened attack." (*Congressional Record*, January 4, 1929, p. 1132; cf. also *ibid.*, January 3, 1929, p. 1068.)

Admiral Pratt, Chief of Naval Operations, declared in his testimony of February 17, 1932: "Defense of the country includes certain primary functions, (i) a defense of our territory against invasion; (ii) defense of our commerce; (iii) defense of our nationals abroad; (iv) defense of our national rights." Hearings before the sub-committee of House Committee on Appropriations, Navy Department Appropriation Bill for 1933 (Washington, Government Printing Office), p. 40.

20. When the treaty was presented to the Privy Council, a member raised the question of whether such a reservation had been made. A government representative is reported to have declared that the Japanese government took it for granted that

Tanaka, replying to an interpellation in the House of Peers on January 29, 1929, declared:

> "Manchuria and Mongolia are of course within the sphere where our right of self-defense can be exercised . . . . As to the relations between the Anti-War Pact and Manchuria, in case the peace of Manchuria were disturbed, Japan should be justified in taking necessary measures as a measure of self-defense. In such cases Japan should not be bound by the Anti-War Pact."[21]

Thus a "self-defense" doctrine was proclaimed to justify the use of force by Great Britain in certain undefined areas lying outside the British Empire; by the United States in Latin America and elsewhere; and by Japan in Manchuria and Mongolia. According to one interpretation, the wide meaning thus given to "defense" considerably weakened the restrictions which international law had formerly imposed upon the exercise of this right. These restrictions were defined by Secretary Webster in the Caroline case in 1842, when he declared that force in self-defense might be employed in foreign territory provided "the necessity of that self-defense is instant, overwhelming, and leaving no choice of means, and no moment for deliberation."[22] The interpretations of self-defense advanced in 1928 seemed to disregard these restrictions.

Moreover, no principle of international law had previously justified the doctrine that each state constituted itself the exclusive judge of whether it had violated its international obligations in invading foreign territory. On the contrary, when two states disagreed as to whether one of them had violated any obligation arising out of a treaty or the general principles of international law, an international dispute came into existence. These principles were openly accepted by the great majority of states when the League of Nations was established.[23] The American note of June 23, 1928 declared, however, that each state *alone* was competent to determine when circumstances justified recourse to self-defense—an interpretation which may have weakened the previously accepted principle that such a question was a matter of international concern. Far from imposing any collective responsibility for the enforcement of the Anti-War Pact,[24] this restrictive interpretation would seem to prevent a signatory of the Anti-War Pact from challenging the claim of another signatory that a given act of force was justified on grounds of self-defense, and it also seemed to prevent arbitration of the question. The only appeal was to the "opinion" of the world, which was a "moral" force, not necessarily connected with governmental action.[24a]

During the Sino-Japanese dispute, the Japanese government did not deny that restrictions existed on the exercise of the right of self-defense, but contended that it had not exceeded them. Moreover, citing the American note of June 23, 1928, the report of the Senate Committee on Foreign Relations, and the British note of May 18, 1928, Japan declared: "The right to pronounce a decision on an act of self-defense falls solely within the sovereign appreciation of the interested State."[25]

The Hoover-Stimson administration definitely refused to accept the restrictive interpretations placed on the Anti-War Pact in 1928, or the interpretation advanced by Japan in 1931-1932. In an address at Pittsburgh on October 26, Secretary Stimson declared that there was nothing in the treaty to warrant "the destructive interpretation" that "each signatory was to be the sole judge of its own behavior . . . And we went to work from the very beginning to show what the treaty meant to us and what we should contend that it necessarily meant to every one else."[26] In his address of August 8, the Secretary declared that the only limitation to the broad covenant against war was the right of self-defense, the limits of which had been clearly defined by countless precedents.

> "A nation which sought to mask imperialistic policy under the guise of the defense of its nationals would soon be unmasked. It could not long hope to confuse or mislead public opinion on a subject so well understood or in a world in which facts can be so easily ascertained and appraised as they can be under the journalistic conditions of today."[27]

In thus denying that each state alone was judge of what the treaty meant, and in vig-

in "those regions where she had paramount and vital interests" Japan would be exempt from the obligation of the Anti-War Pact, especially in view of the reservations made by the other governments. The proceedings of the Privy Council are not published, and this information is taken from Dr. I. Nitobe, "Japan and the Peace Pact," radio address, August 20, 1932.

21. *Kanpo* (*Official Gazette*) House of Peers, extra edition, January 30, 1929, p. 56.

22. J. B. Moore, *Digest of International Law* (New York, Macmillan, 1924), Vol. II, p. 412. Writers as early as Grotius, Machiavelli, Pufendorf and others recognized that definite restrictions existed on the exercise of the right of self-defense. Cf. B. C. Rodick, *The Doctrine of Necessity in International Law* (New York, Columbia University Press, 1928), Chapters I, IV, and VI.

23. Buell. "The Weakness of Peace Machinery," cited, p. 164.

24. Cf. the following: Senator Walsh of Montana: "Supposing some other nation does break this treaty, why should we interest ourselves in it?" Secretary Kellogg: "There is not a bit of reason." Hearings before the Committee on Foreign Relations, cited, p. 14.

24a. A Spanish scholar declares that these interpretations constituted a "triumph for the North American element which defends isolation. What is really paradoxical is that these anti-cooperation tendencies are strengthened" by the Anti-War Pact, thus interpreted. (Camilo Barcia Trelles, *Doctrina de Monroe y Cooperación Internacional*, Madrid, p. 618.) Argentina, Bolivia, Salvador, Uruguay and Brazil have not ratified the Anti-War Pact, largely because of the position taken by the United States concerning the Monroe Doctrine. (Cf. U. S. State Department, *Treaty Information*, Bulletin 29, February, 1932; also, C. Balbareu, *Le Pacte de Paris*, Paris, J. Gamber, 1929, p. 87.)

25. League of Nations, *Observations of the Japanese Government on the Report of the Commission of Enquiry*, C.775.-M.366.1932.VII, p. 24, November 19, 1932. Even if this contention is true under the Anti-War Pact, it is not necessarily true under the League Covenant.

26. *New York Times*, October 27, 1932.

27. Dr. Nitobe asks: "With all my respect for the journalism of today, may I not say that whoever builds his policy on newspapers builds only a house of paper?" *Japan and the Peace Pact*, radio address, August 20, 1932.

orously supporting his own conception of the Anti-War Pact, Mr. Stimson definitely challenged the 1928 interpretations of the Anti-War Pact on which Japan had relied to justify its acts in Manchuria. A Chinese scholar states that the Hoover-Stimson policy constitutes "a revitalizing of the Pact of Paris." By the time the commentators had finished with the pact in 1928 it had "lost much of its strength and has since even become the object of obloquy." Mr. Stimson, however, had restored the "Pact almost to its original categorical position."[28]

General acceptance of the Stimson view of the Anti-War Pact would obviously be of great importance, since the interpretations given that instrument in 1928 made the Anti-War Pact little more than a moral declaration in favor of peace. Nevertheless, two questions arise: First, can the American government alone now set aside an interpretation advanced by the United States and accepted by the other signatories at the time when the Anti-War Pact was concluded in 1928? Opinions differ as to whether the interpretations placed on the pact at the time of signature are legally binding in the future.[29] Whatever the correct legal answer to this question, many observers believe that the United States Senate would not have approved the pact had it believed it meant what Mr. Stimson subsequently said it meant. They also contend that no government can unilaterally attempt to wipe out an interpretation accepted by fourteen states before the signature of the Anti-War Pact, without being accused of bad faith. Legally the United States can escape this difficulty by inducing the other signatories to conclude a protocol embodying a new interpretation of the pact.[30]

Secondly, even if it is admitted that the question of whether a given state exceeds the bounds of self-defense under the Anti-War Pact is a matter of international concern, it does not follow that Japan is under any obligation to accept the views of the United States on this question. Differences as to whether a state has violated its international obligations cannot be settled by a policy of "shouting moral disapproval"; they can be settled only by recourse to international procedure, such as the Permanent Court of International Justice or the League of Nations. Had the United States urged Japan to submit the question whether it had violated its obligations to either of these forums, its position might have been more tenable. The United States did not do so, however, apparently because it had not associated itself with either institution. A state which refrains from associating itself with any form of international organization capable of applying the Anti-War Pact may offer its good offices to states involved in a conflict; but when it goes further and virtually intervenes in support of its own interpretation of the Anti-War Pact, it obviously runs the risk of arousing nationalistic antagonisms. The Japanese today strongly resent what they regard as the attempt of the United States to become the unilateral guardian of the Anti-War Pact.[31]

### COOPERATION WITH THE LEAGUE OF NATIONS

A third gain attributed to the Hoover-Stimson policy during the Sino-Japanese dispute is that the United States cooperated more closely with the League of Nations than ever before.[32] Moreover, it also openly accepted the principle of "consultation."[33] Finally, Secretary Stimson in his address of August 8 intimated that neutrality belonged to the past, thereby implying that the United States would not insist upon the "neutral right" to trade with the aggressor should the League wish to apply economic sanctions under Article XVI.[34]

Despite these gains, critics raise a number of objections to American policy. They declare that during the recent dispute the United States did not work out a method of cooperation with the League complete enough to establish a common front; and that, on

28. Dr. Yuen Li-Liang, *The Pact of Paris as Envisaged by Mr. Stimson: Its Significance in International Law.* (Privately distributed, August 1932.) The United States did not formally charge Japan with having violated its obligations; nevertheless, it made such charges by indirection as in the note of January 7, in Mr. Stimson's speech of August 8, and in Mr. Stimson's letter to Senator Borah. Commenting on the Stimson letter, the Japanese *Jiji* states: "We find it impossible to understand why the Secretary thought fit to refer to the necessity of observing treaty obligations unless we assume he believed that the doings of the Japanese in China were in violation of the covenants of these treaties." Cf. *Trans-Pacific*, March 3, 1932.

29. Cf. "The Anti-War Pact." Foreign Policy Association, *Information Service*, Vol. IV, No. 18, p. 371.

30. A number of critics believe that since the United States was not a member of the League of Nations it would have been in a stronger position had it based its protests to Japan on the Nine-Power Treaty rather than the Anti-War Pact. Japan was not "alone" competent to determine the meaning of the Nine-Power Treaty. Article VII of this agreement provided that: "The Contracting Powers agree that, whenever a situation arises which in the opinion of any one of them involves the application of the stipulations of the present Treaty, and renders desirable discussion of such application, there shall be full and frank communication between the Contracting Powers concerned." In none of the published correspondence did the United States refer to this article.

It may be argued that the reservation as to self-defense does not apply to Article 2 of the Anti-War Pact, in which the parties agree that the solution of all disputes or conflicts, of whatever nature or whatever origin, shall never be sought except by pacific means. Nevertheless, this obligation of pacific settlement does not override the right of self-defense reserved under Article 1 of the pact.

31. In 1929 the Soviet government informed the United States that in its view: "The Paris Pact does not give any single State or group of States the function of protector of this pact." Buell "The United States and the League of Nations," Foreign Policy Association, *Information Service*, Vol. VI, No. 9, July 9, 1930.

32. Cf. p. 281.

33. Cf. the Stimson address of August 8, which declared that consultation was inevitable under the Anti-War Pact, and President Hoover's acceptance speech of August 11.

34. Mr. Stimson stated that "War is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing. Hereafter when two nations engage in armed conflict, either one or both of them must be wrong doers—violators of the general treaty. We no longer draw a circle about them and treat them with the punctilios of the duelist's code. Instead we denounce them as lawbreakers.

"By that very act we have made obsolete many legal precedents and have given the legal profession the task of re-examining many of its codes and treatises."

the contrary, American policy either imposed a veto on League action, as in the case of the commission proposed in September, or vacillated to such an extent that the League had no means of knowing what response the United States would give to any of its proposals.[35]

Although this rather halting policy could be explained by the fact that the United States—which is not a member of the League—was proceeding on a basis of "trial and error," nevertheless the manner and extent to which the United States will cooperate with other nations in the future still remains undefined. So long as the United States insists on retaining "independence of judgment" as to its course of action in each international dispute, critics believe that responsible and regularized international procedure will inevitably be weakened. Many supporters of the Hoover-Stimson policy assert, however, that having accepted the principles of "consultation" and "non-recognition," and having implied that neutrality belongs to the past, the United States will soon proceed to apply these principles through orderly international means.

### THE NON-RECOGNITION DOCTRINE

The final gain attributed to the Hoover-Stimson policy is the doctrine that no situation arising out of violation of the Anti-War Pact will be recognized—a doctrine embodied in the American note of January 7, 1932 and accepted in the Assembly resolution of March 11.[36] In his letter to Senator Borah of February 24 Secretary Stimson declared that, if the non-recognition doctrine were adopted generally, "a caveat will be placed upon such action in violation of the Anti-War Pact which will effectively bar the legality hereafter of any title or right sought to be obtained by pressure or treaty violation, and which, as has been shown by history in the past, will eventually lead to the restoration to China of rights and titles of which she may have been deprived." Commenting on this doctrine in his address of August 8, Secretary Stimson stated: "Moral disapproval, when it becomes the disapproval of the whole world, takes on a significance hitherto unknown in international law. For never has international opinion been so organized and mobilized." Professor Quincy Wright declares that if these principles "were really made effective, international law would be revolutionized. Violence and war would cease to have value in advancing the legal position of states."[37] Apparently it was believed that the non-recognition doctrine would furnish the basis for international security, thus making it possible for the world to disarm.

Some students of international organization, however, are critical of the non-recognition doctrine, especially if it is not supported by material sanctions. They point out that there are few instances in history where the refusal merely to "recognize" a situation for reasons of policy has had the desired effect.[38] The mere iteration of the non-recognition doctrine may, moreover, be actually harmful. If the powers simply refuse to "recognize" Manchoukuo, China will be encouraged to recover it by force, and the Orient will remain indefinitely in turmoil. President Lowell has written that any interpretation of the Anti-War Pact

> ". . . whereby the signatories are under no obligation to prevent war, yet are at liberty to disregard its results, might well create more causes of strife than it would allay . . . . Now the object of international law is to make the rights of nations certain, not to unsettle them; if a wrong has been done to correct it at once, not to leave it as a festering sore for any nation to probe thereafter, or as an excuse for action that would otherwise be without justification."[39]

Sir John Fischer Williams has also written:

> "We shall do nothing—except administer a little opium to our mental and moral vigour—by stating that war and conquest, while we allow them to take place, produce results which are invalid in law. For this is merely in the name of morality to unsettle the foundations of international society and to increase the perpetuation of that anarchy out of which the human race now seeks to struggle."[40]

Mr. Frank H. Simonds declares:

> "Instinct in this Hoover policy was the double purpose to interfere everywhere and to act nowhere; to voice the outraged conscience of mankind on each appropriate occasion, but under no circumstances to bring to the victims of aggression other aid and comfort than words alone could supply . . . . Hoover had assumed moral responsibilities for" all international frontiers "by his doctrine of recognition."[41]

35. Cf. Berdahl, "Relations of the United States and the Council of the League of Nations," cited.

36. The non-recognition doctrine did not originate with the Hoover administration. The United States, in its note of May 11, 1915, laid down the same doctrine concerning the Twenty-one Demands made by Japan on China (*Foreign Relations, 1915*, p. 146). The first Pan American Conference of 1889 passed a resolution declaring that cessions of territory under threat of war are void if an arbitration treaty exists at the time. (Moore, *Digest of International Law*, Vol. VII, p. 316.)

In 1921 the Brazil delegate to the League Assembly proposed an amendment to the Covenant which amounted to a non-recognition doctrine. League of Nations, *Record of the Second Assembly*, Meetings of the Committees, p. 400. A similar proposal was made by the representative of Finland at the 1928 Assembly, *Records of the Ninth Ordinary Session of the Assembly*, Special Supplement No. 64, p. 75; and by the representative of Peru, in the 1929 Assembly, *Records of the Tenth Ordinary Session of the Assembly*, Special Supplement No. 75, p. 168.

37. "The Stimson Note of January 7, 1932." *The American Journal of International Law*, April 1932 p. 348.

38. Cf. the cases cited in R. L. Buell and John Dewey, *Are Sanctions Necessary to International Organization?* F. P. A. Pamphlet No. 82-83, p. 13. In the declaration of November 13, 1820 at Troppau, Austria, Russia and Prussia "undertook to refuse their recognition to changes consumated by illegal means." A. Debidour, *Histoire Diplomatique de l'Europe*, Vol. I, p. 152. The Troppau declaration did not impede revolutions in Europe, nor hinder the establishment of republics in Latin America. Cf. also Lord Landsdowne, dispatch of March 12, 1901 relative to China, *British Documents on the Origins of the War, 1898-1914* (London, H. M. Stationery Office, 1932), Vol. II, p. 27.

39. "Manchuria and the League," *Foreign Affairs*, April 1932.

40. Sir John Fischer Williams, *Chapters on Current International Law and the League of Nations* (London, Longmans, Green, 1929), p. 475.

41. Frank H. Simonds, *Can America Stay at Home?* (New York, Harper, 1932), p. 319.

Finally, it is contended that the non-recognition doctrine destroys confidence in the preventive value of peace machinery, since an agreement not to "recognize" the fruits of aggression assumes that peace machinery is powerless to prevent aggression from taking place.[42] If peace machinery were effective, there would be no occasion for the invocation of the non-recognition doctrine.

Even if one admits the force of these arguments against the non-recognition doctrine, it is difficult to accept the alternative that the League members and the United States should proceed to "recognize" Manchoukuo. It is argued that such recognition would automatically terminate international efforts to induce Japan and China to accept the recommendations of the Lytton report, and would be an admission of the ineffectiveness of peace machinery. It is therefore contended that the non-recognition doctrine is of great value as a provisional measure since, by keeping the issue open, it enables the League and the United States to make a further effort at settlement, and to perfect international organization. Only when such organization is perfected will the non-recognition doctrine lose its significance.

In contrast to these alleged gains, two major criticisms are made against the recent peace policy of the United States: (1) it is declared that there is no fundamental difference between the action of the United States in the Caribbean, and Japan's action in Manchuria;[43] (2) it is stated that relations between the United States and Japan have become needlessly strained almost to the breaking point.

### THE CARIBBEAN AND MANCHURIA

Japan justifies its recent acts in Manchuria on the ground that they were necessary for the protection of Japanese lives and property, and insists on being the sole judge of whether its acts have been confined to this purpose. The United States has defended the principle of intervention in the Caribbean on similar grounds and has consistently refused to arbitrate any important question arising in this area.[44] Moreover, by establishing a military occupation in Haiti and Santo Domingo during the World War and by intervening in Nicaragua in 1926-1927, the United States admittedly went beyond what was necessary directly to protect American lives and property. Owing to the extent of Chinese resistance, the Japanese activities in Manchuria may have been conducted on a larger scale than past activities of the United States in the Caribbean; but it is difficult to see how this circumstance in itself alters the legal nature of Japan's acts.

Defenders of American policy assert that the interventions of the United States occurred before the conclusion of the Anti-War Pact, the purpose of which was to impose new obligations which Japan has failed to observe. It does not necessarily follow, however, that the interventionist acts of the United States before 1928 did not violate international obligations. For example, President Roosevelt intervened and prevented Colombia from suppressing a revolution in Panama in 1903, thereby making possible the establishment of a Panama Republic, despite the fact that the United States was bound by a treaty of 1846 to "guarantee" the rights of sovereignty which Colombia had over the isthmus of Panama—an obligation similar to that which Japan had assumed upon a wider scale under the Nine-Power Treaty and the Anti-War Pact. The United States, moreover, refused to accept the request of Colombia that the question of whether the United States had violated its obligations be arbitrated.[45]

Nor does it necessarily follow that intervention was made illegal by the Anti-War Pact and that therefore the acts of Japan in Manchuria, which have been regarded by the disputants and by the League of Nations as intervention rather than war, are any less legal today than before the Anti-War Pact was concluded. Certainly Secretary Kellogg, Senator Borah and others in 1928 made it clear that in the eyes of the United States the Anti-War Pact would not prevent armed intervention. Moreover, five months after the signature of the Anti-War Pact, the State Department published the Clark memorandum on the Monroe Doctrine which stated that the "arrangements" made by the United States with certain Caribbean countries were an "expression of national policy . . . which originates in the necessities of security or self-preservation."[46] Japanese publicists in-

42. Observation of the Irish Government upon the question of amending the Covenant in order to bring it into harmony with the Pact of Paris, League of Nations, *Official Journal*, May 1930, p. 379.

43. K. K. Kawakami, "America Teaches, Japan Learns," *Atlantic Monthly*, June 1932.

44. At the Pan-American Conference of 1928, Mr. Charles Evans Hughes, head of the American delegation, declared: "What are we to do when government breaks down and American citizens are in danger of their lives? Are we to stand by and see them killed because a government in circumstances which it cannot control and for which it may not be responsible can no longer afford reasonable protection? . . . Now it is the principle of international law that in such a case a government is fully justified in taking action—I would call it interposition of a temporary character—for the purpose of protecting the lives and property of its nationals." "The Sixth Pan American Conference, Part I," F. P. A., *Information Service*, Vol. IV, No. 4, p. 71. Cf. also Mr. H. L. Stimson, *American Policy in Nicaragua* (New York, Scribner, 1927), p. 115. It is interesting to recall that in 1915, four months after the United States refused to "recognize" the Twenty-one Demands of Japan on China, it forcibly established a military occupation in Haiti which is still in existence, although in attenuated form.

45. For Mr. Hay's note of January 5, 1904, cf. Moore, *Digest of International Law*, cited, Vol. IV, p. 105.

46. U. S., Department of State, *Memorandum on the Monroe Doctrine*, 1930, xix.

quire whether, if the United States is justified in controlling Cuba, Haiti and Nicaragua on the ground of "self-preservation," Japan is not similarly justified in maintaining control over Manchoukuo.[47] To the Japanese, Manchuria is as "vital" as Panama to the United States. In their opinion the United States has attempted to induce Japan to internationalize its policy in Manchuria, while consistently refusing to internationalize its own policy in the Caribbean.[48]

Pointing out that the Caribbean policy of the United States is in a transitional stage,[49] supporters of the Hoover-Stimson policy assert that the very fact that the State Department protested so loudly against Japanese occupation in Manchuria will constitute an obstacle to future unilateral interventions of the United States in the Caribbean. Fundamentally, however, the question of whether the United States is justified in protesting against Japanese policy in Manchuria depends upon its own willingness to relinquish exclusive control over certain Caribbean countries, and to submit future interventions in this and other areas to an inter-American or international jurisdiction.[50]

### STRAINED RELATIONS BETWEEN THE UNITED STATES AND JAPAN

Perhaps the strongest criticism of the Hoover-Stimson policy is that it has unnecessarily strained the relations between the United States and Japan.[51] The fact that the American government took the "initiative" against Japan and that its demands may have been inconsistent with its own Caribbean policy and its relations to the League of Nations made Japan particularly resentful toward the United States. This resentment was increased by the circumstance that Japan was the first great power to suffer from the application of the Anti-War Pact by the United States.[52] Moreover, the Japanese fully realized that they had had a long series of disputes with the United States over nationalistic differences, in which the United States had attempted to block Japan's expansion on the Asiatic mainland and had also enacted tariff and immigration legislation which injured or humiliated Japan.[53] In view of these disputes, the Japanese believed that the policy of the United States in the Sino-Japanese conflict was motivated less by a disinterested desire to uphold the Anti-War Pact than by the desire to score another nationalist victory over Japan. This belief was increased when the United States concentrated its entire fleet in the Pacific and when Secretary Stimson intimated, in his letter of February 23 to Senator Borah, that the United States would increase the size of its navy if the Japanese did not observe the Nine-Power Treaty.[54]

That relations between Japan and the United States have become particularly strained is evidenced by the number of Japanese writers who last winter frequently referred to the "inevitability of war," not with Great Britain or France, but with the United States. The statement that "America is not worth fearing" was also heard in Japan. An official in the Manchoukuo government declared: "Were the United States assured of victory over Japan, it might start a war. But if it were defeated by Japan, where would it be? The United States will not take so great a risk."[55] The *Jiji* declared that the statements of Secretary Stimson "have been so provocative that we tend to suspect that he harbors ill-will against Japan." The *Nichi Nichi* referred to his letter to Borah as a "threat against Japan." The *Yomiuri* stated that Stimson's Far Eastern policy "is based

47. After referring to President Roosevelt's intervention in Panama in 1930, a Japanese writer asks if it is "wrong for Japan to learn a lesson from Washington's action, for Japan's case in relation to Manchuria is far better than that of America in relation to Panama." Shin-Ichiro Fujita, *Gaika Jiho* (*Trans-Pacific*, September 8, 1932).

48. In a memorandum of November 5, 1931 the United States suggested to Japan that its dispute with China could be settled by "arbitral, conciliatory or judicial means." Nevertheless, the State Department has refused seven or eight times the request of Panama that differences arising out of the 1903 treaty be arbitrated. R. L. Buell, "Panama and the United States," *Foreign Policy Reports*, Vol. VII, No. 23, January 20, 1932, p. 423.

49. This question will be discussed in a subsequent report.

50. In approving the inter-American arbitration treaty of January 1929, the United States Senate on January 19, 1932 made a reservation declaring that the treaty shall not be applicable to disputes arising out of previously negotiated treaties, thereby excluding disputes arising out of the Canal Treaty of 1903 with Panama, the Platt Amendment with Cuba, the Occupation Treaty with Haiti of 1915, the Bryan-Chamorro treaty of 1914, and other similar agreements. For the reservations of the United States and other countries, cf. *Treaty Information*, Bulletin No. 28, January 1932, p. 2.

51. George Sokolsky writes that "short of a declaration of war," the Hoover-Stimson policy "is the most aggressive and belligerent attitude adopted by one power toward another in recent diplomacy." "The American Monkey Wrench," *The Atlantic Monthly*, December 1932.

52. An incidental factor which aroused Japanese opinion was the publication, by Mr. Herbert O. Yardley, of *The American Black Chamber* (Indianapolis, Bobbs-Merrill, 1931). The author declared that during the Washington naval conference he decoded for the American delegation practically all of the Japanese dispatches. Japanese newspapers published excerpts from this book under such headlines as "Betrayal of International Trust," "Treachery at the Washington Conference," and "Disgrace to the Convener of the Conference." Cf. Washington dispatch, *New York Herald Tribune*, October 18, 1931.

53. Cf. R. L. Buell, "Japanese Immigration," *World Peace Foundation Pamphlets*, 1924, Vol. VIII, Nos. 3-6. Cf. also Secretary Lansing to Ambassador Morris, November 18, *U. S. Foreign Relations, 1918, Russia*, Vol. II, p. 434; H. F. Pringle, *Theodore Roosevelt, a Biography* (New York, Harcourt, Brace, 1931), Ch. X; P. G. Wright, *The American Tariff and Oriental Trade* (Chicago, Chicago University Press, 1931), p. 164.

54. In order to reduce the present tension between the United States and Japan, one American writer has suggested that the United States at once withdraw the scouting fleet from the Pacific to the Atlantic, and open negotiations with Japan looking to the reciprocal reduction of tariff duties and to a solution of the immigration question. R. L. Buell, *New York Herald Tribune*, November 20, 1932.

55. In the course of a series of fifteen articles dealing with "The Question Mark that Hovers on the Horizon of the Pacific," published in the *Osaka Mainichi* and the *Tokyo Nichi Nichi*, Mr. Tada-taka Ikezaki stated that the retention of the scouting fleet in the Pacific must be proof of a scheme of the United States "to coerce what it may regard as its immediate enemy." *Osaka Mainichi* and the *Tokyo Nichi Nichi*, May 19, 1932. On August 30, 1932 Foreign Minister Uchida was interpellated on the question of the American fleet in the Japanese Diet. *New York Times*, August 31, 1932.

on friendship with China, with a cheap brand of pacificism."

Another Japanese writer declared:

> "It is only in America of modern times that one can see the strange phenomenon of a mass of idealists who are always dreaming of cheap peace, being swayed partly by religious and partly by ethical sentiments, often playing leading rôles in brewing war."[56]

Referring to the fact that the Washington naval treaty may be abrogated at the end of 1935, this writer continued:

> " . . . The position in which Japan is now standing closely resembles that of Germany after the Agadir Crisis . . . . The year 1935 is the year tentatively fixed for the second London Naval Conference. It is, of course, not to be predicted what result will be seen at the end of the parley. Nevertheless, if one thinks whether or not Japan will then be gentle and meek as before in accordance with the decision of the first London Conference and will be contented with the ratio of 6 against America, it is not very difficult to forecast what kind of a course the parley will take, what a storm it will cause, and what outcome it will have." Should the second London Conference be a failure, "the new situation arising in the Pacific after that will be extremely threatening."[57]

That the United States is held more responsible for mobilizing sentiment against Japan than the League of Nations is indicated by the following statement:

> "Excepting China, the nations that are most interested in the Manchurian problem are Soviet Russia and the United States. Soviet Russia has been very careful not to bring about any sharp conflict with Japan . . . . On the other hand, persistent objection to the Japanese action in Manchuria has been made by the Washington Government . . . . Japan attaches very much importance to America's stand in the matter, because it constitutes the motive power behind the decisions of the League of Nations and the Nanking government."[58]

Critics of the Hoover-Stimson policy assert that no government having the interests of the American people at heart would thus needlessly embroil relationships with Japan. They point out that no American wished war with Japan, and that the United States had no real material interest at stake in the Manchurian controversy. To risk the danger of war with a great power on behalf of the Anti-War Pact they regard as quixotic, to say the least.

## FUTURE ALTERNATIVES

As for the future, the United States is confronted with three main possibilities:

### 1. THE INDEPENDENT POLICY

The United States could continue the Hoover-Stimson policy, which tends to be one of unilaterally, or at least "independently," applying the Anti-War Pact. The continuance of this policy would enable the United States to retain its "freedom of action" but might involve a recurrence of the dangers which appeared in the Sino-Japanese dispute. Many of those who supported the Hoover-Stimson policy did so in the belief that it would inevitably lead to a closer and more responsible form of international cooperation. They would oppose this policy, however, if it did not pass beyond the present transitional stage. For they believe that in its present form this policy is not effective in maintaining peace and, if again applied, might even involve the United States in a needless war.

### 2. A POLICY OF ISOLATION

The United States could adopt what is apparently the Japanese conception of the Anti-War Pact. When an international dispute arises it might offer its good offices to the parties but do nothing further if one party should reject such a proffer. The adoption of this policy in the Orient would mean that the United States would submit to the principle of Japanese supremacy, sacrificing the Open Door and the political independence of China. Generally, such a policy would leave the war system intact.

### 3. A POLICY OF INTERNATIONAL ORGANIZATION

The third alternative is for the United States to seek the maintenance of peace throughout the world through the channels of international organization. Such an organization would assume responsibility for acting to prevent hostilities; it would have authority to determine when the Anti-War Pact and other obligations had been violated; it would decide whether common action against an aggressor state should be taken. In other words the United States, instead of initiating action to enforce the Anti-War Pact, and arrogating to itself the determination of whether another state had violated this pact, would act merely as one of a number of states bound by international procedure.

Assuming that international organization is essential, there are two alternatives: first, the United States could attempt to create a new system of world procedure to enforce the Anti-War Pact, which would be independent of and parallel to the existing League of Nations.[59] This plan would remove the objections raised in the United

56. *Osaka Mainichi* and the *Tokyo Nichi Nichi*, June 1, 1932.
57. T. Ikezaki, *Osaka Mainichi* and the *Tokyo Nichi Nichi*, June 2, 1932.
58. Eichi Nishizawa, *Gaiko Jiho* (*Trans-Pacific*, August 25, 1932).

59. Professor Hans Wehberg, in *Die Aechtung des Krieges* (Berlin, 1930, p. 160), suggests the establishment of a new international court to apply the pact. Professors John B. Whitton and M. Gonsiorowski similarly suggest the establishment of an international commission. *Boycotts and Peace* (edited by Evans Clark, New York, Harpers, 1932), p. 129.

States against the League of Nations. The establishment of any new world procedure, however, would inevitably weaken the authority of the League or at least create the danger of conflicting jurisdictions. In view of the past unwillingness of the United States to accept the principle of compulsory arbitration or any commitments in regard to sanctions, it is doubtful whether the fifty-six states belonging to the League would scuttle that institution for a looser association organized to meet the wishes of the United States.

The other alternative is for the United States to work out a regularized and responsible relationship to the League of Nations.[60] This relationship involves at least three steps. In the first place, the United States must be willing to accept the mediation of the League Council in any dispute to which it is a party. It cannot logically participate in any joint endeavor to apply the Anti-War Pact to other states unless it is willing to have the principle of joint mediation applied against itself.

Secondly, the United States should participate in League mediations to preserve peace. A step in this direction was taken when the Council invited Mr. Gilbert to participate in its sessions. This precedent, however, is not regarded as satisfactory because Mr. Gilbert took no part in the discussion nor did he have a vote. From the point of view of its own interests, the United States should fully participate in the formulation of a common policy, and should have the same vote as any other power. When the United States ratifies the World Court Protocol of 1929, it will receive the right to take part in meetings of the Council and the Assembly for the purpose of electing judges to the Permanent Court. The most open method of regularizing the relationship between the United States and the League would be the conclusion of a protocol with the League members, authorizing the United States to participate in any League meeting. Such a protocol should remove any constitutional doubt as to whether the United States could fully associate itself with League activities.

Having established a legal basis for cooperation, the United States could then maintain at Geneva a special commissioner, with Ambassadorial rank, who would regularly participate in Council and Assembly meetings, or could entrust this responsibility, say, to the American Ambassador at Paris. It is believed that if American interests were protected by a distinguished representative of this type, they would be safeguarded more adequately than under the present system, where they are entrusted to a consul, or to *ad hoc* visits of other American representatives.[61]

In the third place, the United States should define its attitude toward sanctions. With this end in view, Senator Capper introduced into the Senate in April 1932 a resolution which declared that it was the policy of the United States not to recognize any agreement brought about by means contrary to the covenants of the Pact of Paris, and in case

> ". . . other nations, not parties to a dispute, have in open conference decided that any nation has committed a breach of the pact of Paris by resort to other than pacific means, and have further decided not to aid or abet the violator by the shipment to it of arms or other supplies of war, or to furnish to it financial assistance in its violation; and in case the President determines and by proclamation declares that a breach of the pact of Paris has in fact been committed; it shall be unlawful, unless otherwise provided by Act of Congress or by proclamation of the President, and until the President shall, by proclamation, declare that such violation no longer continues, to export to the violating country arms, munitions, implements of war, or other articles for use in war, or make any such trade or financial arrangement with the violating country or its nationals as in the judgment of the President may be used to strengthen or maintain the violation."

The passage of the Capper resolution or some similar measure would commit the United States to the principle of international sanctions of a non-military nature. Under such a resolution the United States would decide for itself whether an embargo should be applied,[62] although in this decision it would inevitably be influenced by the attitude of the League.

These various measures would establish a regularized and responsible relationship between the United States and the League of Nations, without imposing on this country the obligations of membership involved in Articles X and XVI of the Covenant. It is believed that the United States, by means of these measures, would be able to achieve the aims which it attempted to realize in the Sino-Japanese conflict more effectively than by the policy actually followed.

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60. It is assumed that for political reasons the United States will not join the League of Nations in the immediate future, even with reservations.

61. Referring to the participation of Mr. Prentiss Gilbert in the October meeting of the League Council, one observer writes: "Mr. Gilbert was, in the first place, himself youthful, inexperienced in diplomacy, lacking in prestige, and no doubt embarrassed by the magnitude of his responsibility and the delicacy of his task." (Berdahl, "Relations of the United States with the Council of the League of Nations," cited.) On the Liberia Committee of the Council, which includes distinguished statesmen such as Viscount Cecil and Salvador de Madariaga, the United States was represented by Mr. Samuel Reber, Jr., 29 years old and formerly Third Secretary at Monrovia.

62. Cf. W. T. Stone, "Congress considers the Arms Embargo," *Foreign Policy Bulletin*, Vol. XII, No. 12, January 20, 1933.